

RECEIVED
TOWN CLERK
READING, MASS.

THE DECISION OF THE BOARD OF APPEALS ON THE PETITION OF
MAR 20 12 13 PM '95
LONGWOOD SENIOR LIVING, INC.

MARCH 6, 1995

CASE NOS. 95-1 AND 95-2

The Board of Appeals held a public hearing on February 16, 1995, February 28, 1995 and March 6, 1995 in the Reading Town Hall at 16 Lowell Street, Reading, MA at 7:00 p.m. on the petition of Longwood Senior Living, Inc. ("Longwood") which requested a Municipal Building Reuse Special Permit under Section 4.7 of the Reading Zoning By-laws and certain variances from the requirements of section 4.7 et seq. for the purpose of constructing an addition to and to provide off street parking for an assisted living facility to be developed at 75 Pearl Street, the former Pearl Street School, in Reading. A hearing date of February 23, 1994 was also scheduled but then continued to February 28, 1994.

The Board conducted a site inspection of the property prior to the first hearing on the matter. The petitioners were represented by Attorneys Joshua Davis and Patricia Brennan, Longwood officers Edward Levitt and Bill Casper, and Jim Podesky and Michael Liu from the Architectural Team.

During the course of the hearing, the petitioners modified their initial request for relief from the by-laws so that the final request before the Board was for:

1. Special permit under section 4.7;
2. Variance from section 4.7.2.1(a) to allow the addition to the existing building to be greater than 25% of the gross square footage of the existing building;
3. Variance from section 4.7.2.1(d) to allow the gross floor area of the addition to exceed the gross floor area of the existing building;
4. Variance from section 4.7.2.1 (c) to allow the building at the rear easterly line to encroach 20 feet into the buffer zone (so that its setback would be 30, rather than 50, feet).

Attorney Davis explicitly withdrew the petitioner's request for a variance: (1) to allow the LaPierre School of Dance to remain on the premises; (2) to allow a so-called "multi purpose community room" to be located on the premises; (3) to allow a superintendent's apartment to be located on the premises; (4) to allow an encroachment on the northerly side lot line; (5) to allow less than 30% open space on the property; (6) to allow an increase in height beyond 35 feet; (6) to allow for parking. Variance requests for the superintendent's apartment, height and northerly lot line

encroachments, and open space were withdrawn because Longwood changed its plans to eliminate these areas of non-compliance. The Board determined that a variance was unnecessary for parking and the multi purpose room (neither item being governed by the by-laws--therefore, there being nothing to "vary" from). The Board specifically voted 3-0 in favor of finding that the continued existence of the dance school at 75 Pearl Street, which is a requirement imposed on the developer by the Town, is a preexisting nonconforming use in accordance with section 6.3.2 of the Reading Zoning By-laws upon the sale of the property to Longwood Senior Living and, in consequence, does not require the granting of a variance.

The following facts were presented to the Board through testimony and written submissions from Longwood, the Town Manager, representatives of the Selectmen, the Historical Commission, the Housing Authority, the Community Planning and Development Commission and abutters. Town Counsel also answered questions raised by the Board.

The Pearl Street School, located at 75 Pearl Street, was closed in 1986. The Town declared the 4.8395 acres of land and the building situated thereon as surplus property and attempted to sell it three times bearing in mind the instructional motion of Town Meeting that the property be used for senior citizen housing. The only acceptable offer on the property was one submitted by Longwood, the successful bidder in response to the Town's Request for Proposals ("RFP"). The RFP provided that the bidders preserve the soccer field in the front of the property, allow for the LaPierre Dance School to remain on the site, provide a "community room" to be used by the Town for the conduct of meetings and other community related events, and preserve the historic Pearl Street School structure as recommended by the Reading Historic Commission

The former Pearl Street School was designed by a local architect, G. Sidebottom, and built in 1939. It is the only documented WPA building in Reading. The footprint of the building is approximately 13,492 square feet. The developer proposes to build an addition to the school using the design guidelines set out by the Historic Commission. The building will be used as an Assisted Living Facility which provides residential living and supportive services for frail elderly persons who may need assistance in daily living activities, such as cooking, cleaning, dressing and other personal care assistance. The residents will live in studio, one or two bedroom apartments. A connecting link between the original building and the addition will allow access to all areas of the facility without going outdoors. This aspect of the project is essential to accomplish the goals of a facility intended to serve the frail elderly population.

Longwood proposes to site 14 apartments in the original building together with the Dance School, community room, dining room, and other common areas, and to build 72 apartments in the three story addition. The architects testified that the configuration of the project was constrained by the recommendations of the Historical

Commission and the US. Department of Interior regarding National Register of Historic Places properties. The developer voluntarily submitted itself to the requirements of the DOI because it was financially advantageous to do so (for example, there are tax credits available to the developer); the Historical Commission requirements, however, were part of the RFP (although the involvement of the Historical Commission and the Massachusetts Historical Commission also benefit the developer in its financing through MHFA). Those requirements provided that the developer could not alter the building facade, or the octagonal room and bay window on the south side of the building. The developer's architects also testified that the shape of the interior of the building constrained the use of that space for apartments. Longwood officials testified that the constraints of the existing building require it to seek variances and that if the site had no building on it, it would be a simple matter to situate a new building on the property that would support the project financially, and which would not require any variances.

At the Board's request, the architects submitted a number of revised shadow studies which indicated the shadow impact to the abutter on the northerly lot line. The Board was very concerned about the impact to this neighbor. The developer ultimately withdrew its plans to encroach on the northerly (side) lot line in response to these concerns. The Board also considered the impact of the encroachment on the easterly (rear) lot line to the neighbors. The Board noted from the abutter's testimony, and the site plans, that the difference in grade between the site and the abutters to the north was significant (approximately eight feet below). Thus, the Board considered the visual effect to the neighbors of where the building line of 240 feet begins and ends (i.e., how pushed back or pushed forward the building addition is on the property). The plans showed that the further the building addition is situated to the rear of the property, the greater the visual impact on the neighbors. There was testimony that preserving the soccer field on the front of the property presented a conflict with moving the addition forward.

Longwood submitted information to the Board concerning the financing for the project through the Massachusetts Housing Finance Agency ("MHFA"). The financing plan contained numerous requirements that made it difficult for the developer to change its proposal without jeopardizing the financing. In particular, MHFA had calculated a particular income stream that relied on the project having 86 rental units, 9 of them under the "Group Adult Foster Care" ("GAFC") part of the "Elder Choice" program. The GAFC provided a certain guaranteed income from the state and federal government.

There was lengthy testimony from the Reading Housing Authority on an apparent point of contention between the RHA and the developer concerning the designation of the low income units in the project. The RHA feels that the GAFC program will not benefit current Reading residents. RHA argued the relevance to zoning in two ways. First, RHA maintains that the by-law gives it authority over on-site low income housing; second, RHA asserts that the by-law's intent is to benefit (current) Reading residents and that the developer's proposal does not do so and, thus, violates the by-law. Town

Counsel gave his opinion that the by-law does not give the RHA authority over on-site low income housing.

Longwood then presented its legal argument that for those variances it sought, it met the requirements of M.G.L. c. 40A, section 10. The Board ultimately granted two of the three variances sought because it was persuaded that the requirements were met as follows:

1. Owing to circumstances relating to the...shape...of such...structures and especially affecting such ...structures...a literal enforcement of the ...by-law would involve substantial hardship.

The Board was persuaded and finds that the shape of the building interior prevented the feasible use of that space for apartments but allowed for desirable "common" areas. The constraint on this space necessitated situating a substantial number of units in the addition which increased the size of that addition beyond the allowable limit. Obviously the circumstances relating to the shape of this particular building do not affect generally the zoning district in which it is located. To literally enforce the by-law would constitute a financial hardship to the developer as Longwood demonstrated that the necessary financing for the project relied on a certain number of units and income stream which could not be supported by a smaller addition.

The Board was sympathetic that the Historical Commission requirements also constrained the development since it was apparent that an addition to the southerly side of the building (which would impact the "historic" octagonal room and window) would have numerous advantages over the proposed location. However, the Board was not persuaded that the historical requirements were a "uniqueness" contemplated by M.G.L. c. 40A, sec.10. The petitioner did not present any legal precedent for this argument. Moreover, by its literal terms, compliance with a historical requirement is not a "circumstance" related to the "soil conditions, shape or topography of such land or structures", the criteria stated in the law which must be satisfied.

The petitioner also argued that the size of the parcel was unique in this area; however, a large lot size in this case appears to have nothing to do with the problems created when the by-law is literally enforced. Thus, this purported "uniqueness" also does not support a variance. Finally, the Town's insistence on a ground lease for the soccer field also does not constitute a uniqueness as such a finding would completely undermine the intent and purpose of the law which is to allow variances only when the land or structures necessitate it. Any other result would mean that Town officials could easily circumvent the will of Town Meeting which enacts the by-laws by mandating that a developer meet conditions that could only be complied with by varying the zoning laws and the protection afforded to abutters by those laws.

2. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such...by-law.

Reading does not have sufficient low income housing for the elderly. Assisted living facilities are sought after and desirable alternatives to nursing homes for the frail elderly population they intend to serve. The testimony was unanimous that this type of project is needed and highly desirable. Although the variances concerning size are significant, the testimony was overwhelming that this type of project would be a benefit to the public good. The purpose of the by-law is to provide for the reuse of municipal buildings which "fosters flexibility and creativity of development for the public benefit." The purpose envisions a flexible, not rigid, application of this by-law. Thus, the Board felt that it was not a "substantial" derogation from the by-law to allow an increase in size in order to make this highly regarded project feasible. Further, one Board member felt that what is proposed is not an addition in the usual sense as envisioned in section 4.7.2.1(a) but rather a new building with a link to the existing. Such concept is not addressed in the by-laws; consequently, there can be no derogation from their intent.

The Board was mindful of the effects of an increase in size and thus insisted that the buffer zone be complied with in order to minimize the impact on the direct abutters of the significant size of the addition. The Board felt that it would be a substantial detriment to the public good, as that term certainly includes the direct abutters, to allow an encroachment into any of the buffer zones. The Board felt that maintaining the height of the building at 30 feet along the east side and most of the north side, and not allowing any encroachment into those buffer areas, would help minimize the visual impact of the addition. The pitched roof of the building may be maintained on the south and west sides, and the western end of the north side (i.e., the end furthest from the abutter as indicated on the shadow study submitted on February 28, 1995). The Board relies on the submittal from the petitioner concerning the roof lines that shows no pitched roof along the north side except for the westernmost end. In light of these considerations, the Board took the following votes:

1. Motion was made, seconded and unanimously voted to grant to Longwood Senior Living a variance from section 4.7.2.1(a) of the Reading Zoning By-laws to allow an extension to be made to the existing building at 75 Pearl Street of approximately 124%;

2. Motion was made, seconded and unanimously voted to grant to Longwood Senior Living a variance from section 4.7.2.1(d) of the Reading Zoning By-laws to allow the aggregate gross floor area of the proposed new addition to be approximately 124% of that in the existing building at 75 Pearl Street;

3. Motion was made, seconded and unanimously voted to deny to Longwood Senior Living a variance to allow the building to encroach 20 feet on the easterly side

so that the building would be no closer than 30 feet to the easterly rear lot line at 75 Pearl Street;

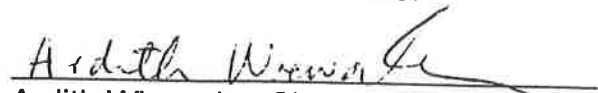
4. Motion was made, seconded and unanimously voted to grant to Longwood Senior Living a special permit under section 4.7 of the Reading Zoning By-laws (Municipal Building Reuse) in order to construct an addition and provide off street parking on property located at 75 Pearl Street for the purpose of an Assisted Living Facility in accordance with and as shown on a plan submitted to the Board dated revised 3/6/95, Sheet 1, and to exclude any encroachment on the 50 foot setback requirement on the northerly and easterly sides of the property and consistent with the variances aranted concerning floor area under section 4.7.2.1(a) and 4.7.2.1(d).

The Board notes that the denial of the variance request to encroach into the buffer zone on the easterly side of the property may change the open space calculations. The Board reminds the developer that the 30% requirement for qualified open space as defined in the by-law must be met and any recalculations as a result of a different placement of the addition must be submitted to and approved by the Building Inspector.

The Board also adopts Town Counsel's legal opinion that the by-law does not give the RHA authority over on-site low income housing in this project and, thus, the developer's proposal does not violate the by-law. Further, the Board does not accept the argument that the by-law is violated because the RHA believes that the GAFC guidelines will prevent any current Reading resident from accessing the low income units. The by-law provides for low income units for the elderly. The Board understands RHA's preference that current Reading residents qualify for those units, but does not find a zoning violation if elderly persons from other towns move into the Longwood facility, if in fact that is the effect of the GAFC program.

Any person aggrieved by this decision of the Board of Appeals may appeal it to the appropriate court pursuant to M.G.L. chapter 40A, section 17, within 20 days after date of filing of this decision with the Town Clerk. Notice of such an appeal with a copy of the complaint must also be filed with the Town Clerk within said 20 days, as provided in said section 17. . These variances shall not take effect until they are recorded in the Middlesex Registry of Deeds and indexed in the grantor index under the name of the owner of record or are recorded and noted on the owner's certificate of title.

BOARD


Ardith Wieworka, Chairman

OF


John Coote

APPEALS


Stephen Tucker



Longwood Place at Reading

A Proven Tradition in Assisted Living

Ms. Laura Gemme
Reading Town Clerk
Town Hall
16 Lowell Street
Reading, MA 01867

January 15, 2014

Dear Ms. Gemme,

Longwood Place at Reading, located at 75 Pearl Street in Reading currently contains 19 housing units reserved for moderate and low income individuals. The Reading Selectmen, the Reading Housing Authority and the principals of Longwood Place at Reading signed an agreement on May 23rd, 1995 to rent half of those low income apartments to qualifying Reading residents. This letter shall certify that as of January 14th, 2014-eleven (11) of those units are rented to qualified Reading residents.

Very Truly Yours

Frank Petras
Executive Director

Cc: Reading Housing Authority
William Casper, Longwood Place at Reading

